



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2004

Chief James R. Dixon
Morgan's Point Police Department
8 Morgan's Point Blvd.
Belton, Texas 76513

OR2004-4535

Dear Chief Dixon:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 202978.

The Morgan's Point Police Department (the "department") received a request for certain statements, audio and video tapes, and "all evidence" regarding a particular incident. We understand you to claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we address the portion of the request that asks for "all evidence" regarding the incident. This office has ruled that tangible physical items are not "information" as that term is contemplated under the Act. *See, e.g.*, Open Records Decision No. 581 (1990). Thus, we find that any responsive tangible physical evidence that is maintained by the department is not public information as that term is defined in section 552.002 of the Government Code. Consequently, the department is not required to release such evidence to the requestor under the Act. *See* Gov't Code §§ 552.002, .021.

We next note that the information at issue is subject to section 261.201 of the Family Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses other laws that make information confidential. Section 261.201 makes confidential reports and investigations of alleged or suspected child abuse or neglect and provides in part:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Having reviewed the submitted information, we find that it constitutes files, reports, records, communications, and working papers used or developed in a criminal investigation of alleged child abuse by the department and that it is therefore subject to section 261.201. *See* Fam. Code § 261.001(1) (defining “abuse” for purposes of chapter 261); *see also* Fam. Code §§ 261.103(a)(1) (report of abuse or neglect can be made to “any local or state law enforcement agency”), .301(a) (investigation of report shall be conducted “[w]ith assistance from the appropriate state or local law enforcement agency”). You do not inform us that the department has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given this assumption, we conclude that the submitted information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold this information in its entirety in accordance with section 552.101 of the Government Code as information made confidential by law.¹ Because of our ruling on this issue, we need not address your arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

¹We note, however, that if the Texas Department of Family and Protective Services has created a file on this incident, the child’s parent(s) may have a statutory right to review the file. *See* Fam. Code § 261.201(g).

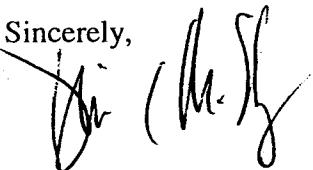
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/krl

Ref: ID# 202978

Enc. Submitted documents

c: Mr. Randy Kirby
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(w/o enclosures)